SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 217.5. *Reporting Appointment and Separation of a Licensee*.
The proposed new rule would be part of a reorganization and simplification of Chapter 217 of the Commission's rules. This rule would contain a law enforcement agency's appointment and separation requirements.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 217.5. *Notificación del nombramiento y la separación de un licenciatario.*
La nueva norma propuesta formaría parte de una reorganización y simplificación del Capítulo 217 del reglamento de la Comisión. Esta norma contendría los requisitos de nombramiento y cese del personal de los organismos encargados de hacer cumplir la ley.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §217.5, Reporting Appointment and Separation of a Licensee. This proposed new rule is part of the proposed reorganization and clarification of Chapter 217, concerning Enrollment, Licensing, Appointment, and Separation. It would remove outdated enrollment, licensing, and appointment language, would move enrollment and appointment processes to their own respective rules, and would clarify the language of this chapter. This proposed new rule would contain appointment and separation processes previously codified in §217.1, Minimum Standards for Enrollment and Initial Licensure, §217.7, Reporting Appointment and Separation of a Licensee, Texas Occupations Code §1701.303, License Application; Duties of Appointing Entity, and Texas Occupations Code §1701.451, Preemployment Procedure. Some of these proposed changes were recommended by the Texas Regulatory Efficiency Office within the Office of the Governor.

The proposed new rule would also incorporate current Commission practices, including that: (1) for a medical examination (L-2), an appointing entity provide all available records relating to a person's prior failed medical examination to the practitioner; (2) for a psychological examination (L-3), an appointing entity provide all available records relating to a person's prior failed psychological examination to the practitioner; (3) for an L-3, the required face-to-face interview may be conducted in person or through video; and (4) an appointing entity may not appoint a person with an unresolved failed medical or psychological examination.

New requirements in the proposed new rule would include: (1) a prohibition on a person from performing any of the appointment or separation requirements for their own appointment or separation to reduce conflicts of interest, the appearance of impropriety, or unethical actions; (2) a streamlined process for the appointment of a constitutionally elected official which only requires verification that the person meets the minimum standards for initial licensure to dispose of the investigation of suitability concerns made unnecessary by their election; and (3) an appointing agency obtaining approval of an appointment before allowing the person to act under the authority of a Commission license to prevent the person from performing regulated activity without proper authority.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed rule.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by reorganizing and clarifying Chapter 217 for ease of understanding. There will be no anticipated economic costs to persons required to comply with the proposed rule.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed rule.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed rule.

Mr. Beauchamp has determined the following:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule does create a new regulation by prohibiting a person from performing their own appointment or separation requirements;
(6) the proposed rule does not repeal an existing regulation, but does expand an existing regulation by requiring an appointing agency to obtain approval of an appointment before allowing the person to act under the authority of a Commission license, and does limit an existing regulation by streamlining the process for the appointment of a constitutionally elected official;
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission is requesting comments regarding the proposed new rule and information related to the cost, benefit, or effect of the proposed new rule, including any applicable data, research, or analysis, from any person required to comply with the proposed new rule or any other interested person. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments and information may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, Texas Occupations Code §1701.303, License Application; Duties of Appointing Entity, Texas Occupations Code §1701.306, Psychological and Physical

Examination, Texas Occupations Code §1701.451, Preemployment Procedure, and Texas Occupations Code §1701.452, Employment Termination Report. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards relating to competence and reliability, including the education, training, physical, and mental standards, for licensing as an officer, county jailer, or telecommunicator. Texas Occupations Code §1701.303 requires a law enforcement agency to review certain information in the possession of the Commission as part of a pre-appointment background investigation of a person. Texas Occupations Code §1701.306 requires the Commission to adopt rules relating to the medical and psychological examinations required for a person to obtain a license. Texas Occupations Code §1701.451 requires the Commission to establish procedures for the pre-appointment background investigation of a person. Texas Occupations Code §1701.452 establishes the reporting requirements for a person's separation from an appointment.

The new rule as proposed affects or implements Texas Occupations Code Chapter 1701, Law Enforcement Officers. No other code, article, or statute is affected by this proposal.

The proposed new rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§217.5. Reporting Appointment and Separation of a Licensee.

(a) A person who is the subject of an appointment or a separation shall not perform any of the appointment or separation requirements in this section for themselves.

(b) Before a law enforcement agency may appoint a person licensed as a peace officer, county jailer, or telecommunicator, except a constitutionally elected official, the agency chief administrator or designee must:

(1) obtain the person's written consent for the agency to view the person's records;

(2) obtain a complete, signed, and notarized or digitally certified commission-approved Personal History Statement (PHS);

(3) conduct and document a pre-appointment background investigation on the person, to include at a minimum:

(A) obtaining the F5R History and Employment Verification (F5R) and Personal Status Report (PSR) from the commission;

(B) reviewing the PHS for eligibility for licensure and appointment and suitability for appointment

(C) having the person fingerprinted and subjected to a search of local, state, and U.S. national records and fingerprint files to disclose any criminal record or pending warrants;

(D) obtaining and reviewing offense reports and criminal court records for any arrests or criminal cases discovered;

(E) requesting and reviewing records from the commission maintained in the commission service records and confidential statewide employment database;

(F) requesting and reviewing records from each basic licensing course attended, regardless of completion;

(G) requesting and reviewing records from each previous appointing agency, to include at a minimum the personnel file, department file, TCOLE credentialing file, appointment application, and other appointment or employment records;

(H) for a person who is a military veteran, obtaining the United States Department of Defense Form DD-214 or other military discharge record;

(I) obtaining and reviewing evidence of financial responsibility as required by Texas Transportation Code § 601.051;

(J) obtaining and reviewing a driving record from the Texas Department of Public Safety;

(K) obtaining and reviewing information on the person's law enforcement background as available through the national decertification index (NDI);

(L) obtaining and reviewing information on the person's background from at least three personal references and at least two professional references;

(M) obtaining proof of United States citizenship or, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge, proof of legal permanent residence and proof that the person has applied for United States citizenship;

(N) obtaining proof of meeting the minimum educational requirements for licensure;

(O) for a first appointment or an appointment more than 180 days after a licensee's last appointment, obtaining a valid Licensee Medical Condition Declaration (L-2) for the person;

(P) for a first appointment or an appointment more than 180 days after a licensee's last appointment, obtaining a valid Licensee Psychological and Emotional Health Declaration (L-3) for the person; and

(Q) for a peace officer, obtaining proof of valid annual firearms proficiency;

(4) verify that the person meets the minimum standards for initial licensure;

(5) complete the F5R;

(6) prepare a summary that documents the findings of the background investigation;

(7) submit to the commission a completed Background Confirmation Form (BCF) certifying that all pre-appointment procedures required by Occupations Code § 1701.451 have been completed; and

(8) submit to the commission a completed Appointment Application (L-1) or Telecommunicator Appointment (L1-T).

(c) Before a law enforcement agency may appoint a constitutionally elected official as sheriff or constable, the agency must:

(1) verify that the person meets the minimum standards for initial licensure by:

(A) having the person fingerprinted and subjected to a search of local, state, and U.S. national records and fingerprint files to disclose any criminal record or pending warrants;

(B) obtaining and reviewing offense reports and criminal court records for any arrests or criminal cases discovered;

(C) for a person who is a military veteran, obtaining the United States Department of Defense Form DD-214 or other military discharge record;

(D) obtaining and reviewing information on the person's law enforcement background as available through the national decertification index (NDI);

(E) obtaining proof of United States citizenship or, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge, proof of legal permanent residence and proof that the person has applied for United States citizenship;

(F) obtaining proof of meeting the minimum educational requirements for licensure;

(G) for a first appointment or an appointment more than 180 days after a licensee's last appointment, obtaining a valid L-2 for the person; and

(H) for a first appointment or an appointment more than 180 days after a licensee's last appointment, obtaining a valid L-3 for the person; and

(2) submit to the commission a completed Appointment Application (L-1).

(d) To obtain a valid L-2:

(1) the agency must select a physician licensed by the Texas Medical Board to conduct a medical examination of the person;

(2) the agency shall provide the physician with a job description for the type of appointment sought and all available records relating to any medical examinations previously failed by the person;

(3) the physician must be familiar with the duties appropriate to the type of appointment sought; and

(4) the physician must examine the person and declare within 180 days of appointment that the person:

(A) is physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of appointment sought; and

(B) shows no trace of drug dependency or illegal drug use after a blood test or other medical test.

(e) To obtain a valid L-3:

(1) the agency must select one of the following practitioners to conduct a psychological examination of the person:

(A) a psychologist licensed by the Texas State Board of Examiners of Psychologists;

(B) a psychiatrist licensed by the Texas Medical Board;

(C) under exceptional circumstances and with prior written approval from the commission, a physician licensed by the Texas Medical Board; or

(D) under exceptional circumstances and with prior written approval from the commission, a qualified person identified by Texas Occupations Code § 501.004;

(2) the agency shall provide the practitioner with a job description for the type of appointment sought, the person's PHS, a summary of the background investigation, and all available records relating to any psychological examinations previously failed by the person;

(3) the practitioner must be familiar with the duties appropriate to the type of appointment sought;

(4) the examination must:

(A) consist of at least two instruments, one which measures personality traits and one which measures psychopathology;

(B) consist of a face-to-face interview, either in person or through video, conducted after the instruments have been scored; and

(C) use professionally recognized standards and methods; and

(5) the practitioner must examine the person and declare within 180 days of appointment that the person is in satisfactory psychological and emotional health to serve as the type of licensee for the appointment sought.

(f) For a first appointment, an agency may also obtain a valid L-2 or L-3 that the person used for enrollment in a basic licensing course for the license type corresponding to the appointment if the appointment occurs within 180 days from completion of the basic licensing course.

(g) If a person fails any L-2, L-3, medical fitness-for-duty examination (FFDE), or psychological FFDE, an agency may not appoint that person until another valid L-2 or L-3 is obtained, as applicable.

(h) The agency must obtain approval of the appointment from the commission before allowing the person to act under the authority of the license.
(i) A law enforcement agency or enrolling entity that is given a signed consent form shall make the person's records available to a prospective appointing law enforcement agency as authorized by Texas Occupations Code § 1701.451.
(j) When a licensee separates from an agency, within seven business days of the separation or exhaustion of all available administrative appeals, the agency shall:
(1) submit a Separation of Licensee (F-5) report to the commission; and
(2) provide a copy of the F-5 report to the licensee by hand delivery or by certified mail to the last known address of the licensee.
(k) An agency must retain records obtained or created under this section while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency chief administrator or designee in a physical or electronic format readily accessible to the commission and any prospective appointing law enforcement agency.
(l) The effective date of this section is January 1, 2027.